

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed

#### Rule making related to waivers

The Human Services Department hereby amends Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

#### *Purpose and Summary*

This rule making adds the reserve capacity slot criteria from the home- and community-based services (HCBS) waiver applications to the intellectual disability (ID) waiver and the children’s mental health (CMH) waiver and reduces the minimum amount of time that a member must be in an institutional stay to qualify for a reserved capacity slot under the brain injury (BI) waiver from six months to four months.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as **ARC 5550C**. No public comments were received. One change from the Notice has been made. The State reserves payment slots for each waiver year. The waiver year has changed to October 1 to September 30 (previously it was July 1 to June 30) based on the last renewal approved for Iowa by the Centers for Medicare and Medicaid (CMS). Because of this, the reference to “July 1 to June 30” in new paragraph 83.123(1)“e” in Item 3 has been changed to “October 1 to September 30.”

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on June 10, 2021.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** paragraph **83.61(4)“d”**:

*d.* The state reserves payment slots each waiver year (July 1 to June 30) for use by children who must reside outside the family home in a residential-based supported community living licensed residential care facility. The state also reserves payment slots each waiver year (July 1 to June 30) for use by members living in an ICF/ID, nursing facility, or out-of-state placement, or transitioning from the Money Follows the Person Grant, who choose to access services in the intellectual disability waiver program and leave the ICF/ID, nursing facility, or out-of-state placement to live in the community.

(1) Applicants who currently reside in an ICF/ID or nursing facility and have resided in that setting for four or more months may request a reserved capacity slot through the intellectual disability waiver.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have the person's name maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on the person's order on the waiting list.

ITEM 2. Amend paragraph **83.82(4)“d”** as follows:

*d.* Applicants who currently reside in a community-based neurobehavioral rehabilitation residential setting, an intermediate care facility for persons with an intellectual disability (ICF/ID), a skilled nursing facility, or an ICF and have resided in that setting for ~~six~~ four or more months may request a reserved capacity slot through the brain injury waiver.

(1) to (3) No change.

ITEM 3. Adopt the following **new** paragraph **83.123(1)“e”**:

*e.* The state reserves payment slots each waiver year (October 1 to September 30) for use by members living in a state of Iowa mental health institute (MHI), a psychiatric residential treatment facility (PRTF), or an out-of-state facility placement who choose to access services in the children's mental health waiver program and leave the MHI, PRTF, or out-of-state placement to live within their family home. For the purpose of reserved capacity within the children's mental health waiver program, an MHI is defined in Iowa Code section 226.1 and a PRTF is defined in 42 CFR 483.352.

(1) Applicants who currently reside in an MHI, PRTF, or out-of-state placement and have resided in that setting for four or more months may request a reserved capacity slot through the children's mental health waiver program.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have their names maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the

beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on their order on the waiting list.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.